POPULAR v. DELEGATED GOVERNMENT

OREGON HAS THE BEST SYSTEM OF POPULAR GOVERNMENT IN THE WORLD TO-DAY—THE AUSTRALIAN BALLOT—REGISTRATION OF VOTERS—INITIATIVE AND REFERENDUM—DIRECT PRIMARY—CORRUPT PRACTICES ACT—RECALL—AN ABSOLUTE GOVERNMENT BY THE PEOPLE

SPEECH OF

HON. JONATHAN BOURNE, JR.

OF OREGON

IN THE

SENATE OF THE UNITED STATES

THURSDAY, MAY 5, 1910

WASHINGTON
GOVERNMENT PRINTING OFFICE
1910

41504–9003

SPEECH

OF

HON. JONATHAN BOURNE, JR.

On "popular" versus "delegated" government and the effect it has on legislation—

Mr. BOURNE said:

Mr. PRESIDENT: The justice of all laws rests primarily on the integrity, ability, and disinterestedness of the individuals enacting them, those construing them, and those administering them. On this assumption, I believe the remarks I intend to make have a bearing on all legislation, and hence do not hesitate to present them now while we have the interstate-commerce bill under consideration.

I think all will concede that the times seem awry. Unrest exists throughout the civilized world. People are speculating as to the causes. Daily uncertainty grows stronger as to future events.

In my opinion, the basic cause is that people have lost confidence in many of their public servants and bitterly resent attempted dictatorship by "would-be" political bosses and representatives of special interests who desire to direct public servants and legislation for their own selfish interests rather than assist in the enactment of laws guaranteeing justice to all and special privileges to none.

Successful and permanent government must rest primarily on recognition of the rights of men and the absolute sovereignty of the people. Upon these principles is built the superstructure of our Republic. Their maintenance and perpetuation measure the life of the Republic. These policies, therefore, stand for the rights and liberties of the people and for the power and majesty of the Government as against the enemies of both.

The people have been shocked by the number of business and political exposures which have been brought out in the last ten years.

At the time of Mr. Roosevelt's inauguration the tendency was to measure national prosperity by property rather than by personal liberty. The commercial force of society was rapidly throttling the police power of the Government. Political machines and bosses dictated the legislative and administrative destinies of many communities and States. Mr. Roosevelt, with his experience in practical politics, familiarity with governmental operations, inherent honesty, dynamic energy, and limitless courage, demonstrated that he measured up to the needs of the time and assumed leadership for reinstatement of the police power of the Government in supremacy over the commercial force of society. To him belongs credit for reestablishment of these two great forces in their proper relative positions. He awakened the public conscience, and the result is a struggle throughout the Nation between the advocates of what I would term "popular government" and the advocates of delegated government.

DIRECT SELECTION OF PUBLIC SERVANTS.

In many instances the people have lost confidence in their public servants, the same as many stockholders have lost confidence in corporation management. The remedy in government is the direct selection by the people of their public servants, with the resultant accountability of the public servant to the people, and not to a political machine or boss. I purposely use the word "selection" rather than "nomination," for to my mind it more clearly expresses the idea of the responsibility of good citizenship. Selection implies the careful investigation of all and the resultant choice of one. The remedy in corporation management is rigid responsibility to government; equal obedience to laws and equal accountability to stockholders, giving the Government and the stockholders the fullest publicity of its operations, including absolute honesty and simplicity of its accounts, thus protecting the rights of the people and insuring to all the stockholders proportional enjoyment in the fruits of successful management.

41504—9003

321.4
B66p
cop. 2

Mr. President, I will endeavor to deal in my remarks with what I believe to be the great issue, not only in this country, but throughout the civilized world, namely, popular against delegated government.

Much has been said in favor of representative government. I believe in a truly representative government, but where the selection of public servants is left to a political machine or boss, as is frequently the case under our convention system, the tendency is toward misrepresentative, and not a truly representative, form of government, notwithstanding the election is supposedly by the people.

PEOPLE CAPABLE OF SELF-GOVERNMENT.

There are doubtless some people who honestly believe that the people as a whole have not reached the stage of development qualifying them individually to participate in government. Others whom I credit with the intelligence which I have seen manifested by them in other directions assert the inability of the people to govern themselves as an excuse rather than a conviction; but I, Mr. President, from thirty years' experience in practical politics, am absolutely convinced not only that the people are fully capable of governing themselves, but that they are decidedly the best judges as to those individuals to whom they shall delegate the truly representative power.

Individual selfishness, cupidity, and ambition are minimized in the party or general electorate selections of public servants; good general service is demanded by the electorate, special service by the individual.

Hence my advocacy of popular government. By popular government I mean direct legislation as far as practicable, popular selection of candidates, and such regulation of political campaigns as will secure fair and honest elections. Popular selection under the present stage of evolution of our Government can be obtained only by direct primary laws and complete elimination of convention and caucus nomination of public officers.

Time was when a few self-constituted leaders in Oregon politics arrogated to themselves the prerogatives of government and made their assumption effective through illicit combinations and the use of money in any and every quarter where necessary to their purposes of control—that is, they commercialized conventions, legislatures, and the administrative branches of the city, county, and state government. It was not a condition peculiar to Oregon. It obtained, and I believe still obtains in a more or less flagrant degree, in every State in the Union; and it had its boldest, most unscrupulous executive genius in Boss Tweed, who, recognizing the opportunity of the crook in government by party through convention nominations, declared he did not care who elected the candidates so long as he had the power to nominate the ticket.

Revolting against these conditions, the State which I have the honor, in part, to represent, has evolved the best-known system of popular government, and, because of this conviction, I take this opportunity of presenting not only to the Senate, but to the country a brief analysis of the Oregon laws bearing upon this question, with my own deductions as to the improvement they show and the merits they possess.

AUSTRALIAN BALLOT LAW.

Oregon in 1891 adopted the Australian ballot, which insures secrecy, prevents intimidation, and reduces the opportunity for bribery. This, of course, is a prerequisite to any form of popular government.

REGISTRATION LAW.

Supplementing the Australian ballot law, Oregon enacted in 1899 a registration law applying to general elections and enlarged its scope in 1904 in the law creating a direct primary. This law requires registration prior to voting in either the general or the primary election, and provides that before voting in a party primary the voter must, under oath, register his party affiliation. Registration begins five months prior to the general election. Registration books are closed ten days prior to the primary election and opened again four days after the primary, and then kept open until about twenty days before the general election. A voter may register either by appearing at the office of the county clerk or by signing registration blanks before a notary public or justice of the peace.

Upon the registration books are entered the full name of the voter, his registration number, date of registration, his occupation, age, nativity, date and place of naturalization, if any, and his place of residence. In order to guard

41504—9003

against fraud, it is required that the voter shall give his street and number, and if he is not the head of the house he occupies, he must show that fact and give the number of the room he occupies and upon what floor of the building it is located. He must also sign the register, if he can write. If he is unable to write his name, the reason must be given. If his inability is due to a physical defect, the nature of the infirmity must be noted. If it is due to illiteracy, a physical description of the man must be noted in the register.

All these facts are entered in precinct registers which are placed in the hands of election judges and clerks on election day, so that illegal voting may be prevented.

Any registered voter may be challenged and every nonregistered voter is considered challenged. An unregistered person qualified as an elector may be permitted to vote upon signing an affidavit setting forth all the facts required in registration and also securing the affidavits of six owners of real property to the effect that they personally know him and his residence and believe all his statements to be true.

Thus the greatest boon of American citizenship, namely, the right to participate in government, is protected, and dead men, repeaters, and nonresidents can no longer be voted in Oregon.

INITIATIVE AND REFERENDUM.

Oregon's next step in popular government was the adoption of the initiative and referendum amendment to the constitution, which amendment was adopted in June, 1902, by a vote of 62,024 to 5,668. It provides that legislative authority shall be vested in a legislative assembly, but that the people reserve to themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independent of the legislative assembly, and also reserve power to approve or reject at the polls any act of the legislature. An initiative petition must be signed by 8 per cent of the legal voters, as shown by the vote for supreme judge at the last preceding general election, and filed with the secretary of state not less than four months before the election.

A referendum petition need be signed by only 5 per cent of the voters and filed with the secretary of state within ninety days after final adjournment of the legislature which passed the bill on which the referendum is demanded. The legislature may itself refer to the people any act passed by it. The veto power of the governor does not extend to any measure referred to the people.

STATE PUBLISHES PUBLICITY PAMPHLETS.

In addition to the publicity incident to the circulation of the petitions, the law provides that the secretary of state shall, at the expense of the State, mail to every registered voter in the State a printed pamphlet containing a true copy of the title and text of each measure to be submitted to the people, and the proponents and opponents of the law have the right to insert in said pamphlet, at the actual cost to themselves of paper and printing only, such arguments as they see fit to make. These pamphlets must be mailed not later than fifty-five days before a general election and twenty days before a special election.

The initiative develops the electorate, placing directly upon them the responsibility for legislation enacted under its provision; the referendum elevates the legislature because of the possibility of its use in case of undesirable legislation. Brains, ideas, and argument, rather than money, intimidation, and logrolling govern the standards of legislation.

Corporation attorneys must exercise their mental activities along constructive rather than destructive and avoidance lines. Possibility of scandal is minimized, recipients of franchises freed from the imputation of secret purchase, and general community confidence is secured.

OREGON'S EXPERIENCE SATISFACTORY.

Since that amendment was adopted, the people of Oregon have voted upon 23 measures submitted to them under the initiative, 5 submitted under the referendum, and 4 referred to the people by the legislature. Nineteen measures were submitted at one election. That the people acted intelligently is evident from the fact that in no instance has there been general dissatisfaction with the result of the vote. The measures submitted presented almost every phase of legislation, and some of them were bills of considerable length.

Results attained under direct legislation in Oregon compare so favorably with the work of a legislative assembly that an effort to repeal the initiative

and referendum would be overwhelmingly defeated. No effort has ever been attempted.

It has been asserted that the people will not study a large number of measures, but will vote in the affirmative, regardless of the merits of measures submitted. Experience in Oregon has disproved this, for the results show that the people have exercised discriminating judgment. They have enacted laws and have adopted constitutional amendments in which they believed and have defeated those of which they did not approve.

CONCRETE ILLUSTRATIONS.

I will give several concrete illustrations:

Under the initiative in 1904 a local-option liquor law was adopted by a vote of 43,316 to 40,194. Two years later the opponents of the local-option law proposed an amendment in their interest, and this was defeated by a vote of 35,297 to 45,144. It will be noticed that in the first instance the issue was affirmatively presented and in the second instance negatively, with a view to befogging the people, but the popular expression was the same in both.

For many years city charters in Oregon had been made the trading stock of political factions in the legislature. The dominant faction amended city charters as a reward to political allies. Traffic in local legislation even went so far that it sometimes served as a consideration in election of United States Senators. But in 1906, having tired of this disregard of the interest of good municipal government, the people, acting under the initiative, adopted a constitutional amendment which took away from the legislature the power to enact or amend a city charter and vested that power in the people of the municipalities, thus establishing home rule. The amendment was adopted by a vote of 52,567 to 19,852.

* * * * * * *

In Oregon, as in many other States, there has long been a feeling that certain classes of corporations which own very little tangible property do not bear their proper share of the burden of taxation. Legislatures failed to provide a remedy. For the purpose of securing a more equitable distribution of the burden of taxation the state grange, proceeding under the initiative, proposed a law levying a gross-earnings tax of 3 per cent on sleeping car, refrigerator car, and oil car companies, which measure was adopted by a vote of 69,635 to 6,441. The grange also proposed a similar law levying a gross-earnings tax of 3 per cent on express and 2 per cent on telephone and telegraph companies, and it was adopted by a vote of 70,872 to 6,360. Each of these gross-earnings tax laws applied only to intrastate business.

That the people can and will study measures and vote with discrimination is shown by the record upon two appropriation bills passed by the legislature of 1907. One of these bills proposed to increase the annual fixed appropriation for the state university from $47,500 to $125,000. The other bill appropriated $100,000 for construction of armories for the national guard. The referendum was demanded upon both measures, and both were submitted to a vote of the people at the general election in 1908. There was full and fair discussion through the press, at public meetings, and at sessions of the grange. The bill increasing the appropriation for the university was approved by the people by a vote of 44,115 to 40,535. The armory appropriation bill was defeated by a vote of 33,507 to 54,848.

I shall cite but one more of many instances which show the manner in which the initiative has been effective in Oregon. For a great many years there had been efforts to secure adequate laws for the protection of salmon in the Columbia River, but because of conflicting interests between the upper river and the lower river, legislatures could not be induced to enact laws that would protect the fish. As a consequence the salmon fisheries were being destroyed. At the election in 1908 the upper-river fishermen proposed under the initiative a bill practically prohibiting fishing on the lower river and the lower-river fishermen proposed a bill forbidding fishing on the upper river. There was wide discussion of both bills, and the suggestion was freely made that both bills should be adopted. The people, disgusted with the failures of the legislatures to enact suitable laws for the protection of fish, followed this suggestion, and both bills were enacted. With fishing practically prohibited on both sections of the river, the legislature in 1909 responded to the popular demand by enacting, in conjunction with the legislature of the State of Washington, a fishery law which

provided adequate protection. I believe I am safe in saying that this would not have been done but for the popular adoption of the two fishery bills.

I do not care to take the time of the Senate to discuss each of the measures that have been acted upon by the people of the State, but in order that those who desire may have the opportunity to observe the wide range the measures have taken and the attitude assumed toward them by the people of Oregon, I ask consent to have published in the RECORD in this connection a very brief summary of the titles of the measures, together with the vote upon each.

Popular vote upon measures submitted to the people of Oregon under either the initiative or referendum.

	Yes.	No.
1904.		
Direct primary law with direct selection of United States Senator [a]	56,205	16,354
Local-option liquor law [a]	43,316	40,198
1906.		
Omnibus appropriation bill, state institutions [b]	43,918	26,758
Equal suffrage constitutional amendment [a]	36,902	47,075
Local-option bill proposed by liquor people [a]	35,297	45,144
Bill for purchase by State of Barlow toll road [a]	31,525	44,527
Amendment requiring referendum on any act calling constitutional convention [a]	47,661	18,751
Amendment giving cities sole power to amend their charters [a]	52,567	19,852
Legislature authorized to fix pay of state printer [a]	63,749	9,571
Initiative and referendum to apply to all local, special, and municipal laws [a]	47,678	16,735
Bill prohibiting free passes on railroads [a]	57,281	16,779
Gross-earnings tax on sleeping, refrigerator, and oil car companies [a]	69,635	6,441
Gross-earnings tax on express, telephone, and telegraph companies [a]	70,872	6,360
1908.		
Amendment increasing pay of legislators from $120 to $400 per session [c]	19,691	68,892
Amendment permitting location of state institutions at places other than the capital [c]	41,971	40,868
Amendment reorganizing system of courts and increasing supreme judges from three to five [c]	30,243	50,591
Amendment changing general election from June to November [c]	65,728	18,590
Bill giving sheriffs control of county prisoners [b]	60,443	30,033
Railroads required to give public officials free passes [b]	28,856	59,406
Bill appropriating $100,000 for armories [b]	33,507	54,848
Bill increasing fixed appropriation for state university from $47,500 to $125,000 annually [b]	44,115	40,535
Equal-suffrage amendment [a]	36,858	58,670
Fishery bill proposed by fish-wheel operators [c]	46,582	40,720
Fishery bill proposed by gill-net operators [a]	56,130	30,280
Amendment giving cities control of liquor selling, poolrooms, theaters, etc., subject to local-option law [a]	39,442	52,346
Modified form of single-tax amendment [a]	32,066	60,871
Recall power on public officials [a]	58,381	31,002
Bill instructing legislators to vote for people's choice for United States Senators [a]	69,668	21,162
Amendment authorizing proportional-representation law [a]	48,868	34,128
Corrupt-practices act governing elections [a]	54,042	31,301
Amendment requiring indictment to be by grand jury [a]	52,214	28,487
Bill creating Hood River County [a]	43,948	26,778

[a] Submitted under the initiative.
[b] Submitted under the referendum upon legislative act.
[c] Submitted to the people by the legislature.

DIRECT LEGISLATION NOT EXPENSIVE.

Anticipating the objection that direct legislation is expensive to the State, I will say that the submission of a total of 32 measures at three different elections in Oregon has cost the State $25,000, or an average of about $781 for each measure. At the election in 1908 there were 19 measures submitted, at a cost to the State of $12,362, or an average of about $651 each. Five of these 19 measures were submitted without argument. Upon the other 14 measures there were 19 arguments submitted, for which the authors paid the cost, amounting to $3,157.

I have no hesitancy in saying that the people of Oregon feel satisfied that they have received full value for the $25,000 they have spent for the submission of measures under the initiative and referendum. The only persons who raise the question of cost are those who would be opposed to direct legislation

if it were free of cost. I think I could cite numerous instances of laws passed by the legislature which cost the people much more than $25,000 without any tangible return, and perhaps could cite a few measures which had been defeated by legislatures with resultant loss to the people of many times $25,000. The cost of legislation can not always be measured in dollars.

PEOPLE INTELLIGENT AND FAIR.

The people are not only intelligent, but fair and honest. When the initiative and referendum was under consideration it was freely predicted by enemies of popular government that the power would be abused and that capitalists would not invest their money in a State where property would be subject to attacks of popular passion and temporary whims. Experience has exploded this argument. There has been no hasty or ill-advised legislation. The people act calmly and deliberately and with that spirit of fairness which always characterizes a body of men who earn their living and acquire their property by legitimate means. Corporations have not been held up and blackmailed by the people, as they often have been by legislators. "Pinch bills" are unknown. The people of Oregon were never before more prosperous and contented than they are to-day, and never before did the State offer such an inviting field for investment of capital. Not only are two transcontinental railroads building across the State, but several interurban electric lines are under construction, and rights of way for others are in demand.

I have mentioned all of these facts for the purpose of showing that the people of my State, and, I believe, the people of every other State, can be trusted to act intelligently and honestly upon any question of legislation submitted for their approval or disapproval.

The initiative and referendum is but one of the features of popular government in Oregon. It has been the means by which other reforms and progressive laws and constitutional amendments have been secured, for it has been found that the people can not always get the laws they desire through the legislature, but can get them through resort to the initiative.

DIRECT PRIMARY LAW.

The next step after the adoption of the initiative and referendum was the adoption, in 1904, by a vote of 56,205 to 16,354, of a direct primary law, which is designed to supersede the old and unsatisfactory convention system. The Oregon direct primary law provides for a primary election to be held forty-five days prior to the general election at the usual polling places and with the usual three election judges and three clerks in charge, appointed by the county courts. Not more than two judges or clerks can be members of the same political party. Two sets of ballots are provided, one for the Democratic party and one for the Republican party. Any party polling 25 per cent of the vote at the previous election is brought under the provisions of the direct primary law, but thus far only the Democratic and Republican parties are affected by it.

Any legal voter may become a candidate in the primaries for nomination for any office by filing a petition signed by a certain per cent of the voters of his party. If the nomination is for a municipal or county office, the petition must include registered electors residing in at least one-fifth of the voting precincts of the county, municipality, or district. If it be a state or district office and the district comprises more than one county the petition must include electors residing in each of at least one-eighth of the precincts in at least two counties in the district. If it be an office to be voted for in the State at large the petition must include electors residing in each of at least one-tenth of the precincts in each of at least seven counties of the State. If it be an office to be voted for in a congressional district the petition must include electors residing in at least one-tenth of the precincts in each of at least one-fourth of the counties in the district. The number of signers required is at least 2 per cent of the party vote in the electoral district, but not more than 1,000 signers are required for a state or congressional office nor more than 500 in any other case. Petitions must be filed for a state or district office at least twenty days before the primary election, and for county or municipal offices fifteen days before the election. Names of the candidates are arranged on the ballots in alphabetical order. The ballot for the Republican party is printed on white paper; that for the Democratic party on blue paper; and that for any other party on yellow

41504—9003

paper. The Australian ballot form is used in the primaries. No elector is qualified to vote at a party primary election unless he has registered and designated, under oath, his party affiliation, except that he may register at the polls on election day by filing an affidavit, verified by six freeholders of his precinct certifying to his legal qualifications, in which affidavit he must also designate his party affiliation.

PARTY INTEGRITY PROTECTED.

No voter is required to designate his party affiliation in order to vote at the general election, but registration of party affiliation is a prerequisite to participation in a party primary. This requirement prevents the participation of members of one party in the primaries of another party. The right of each party to choose its own candidates is thus protected, and an evil all too common where restrictive party primary laws are not in force is avoided.

Our direct-primary law further provides that the candidate in his petition shall, among other things, agree to "accept the nomination and will not withdraw;" and, if elected, "will qualify as an officer," implying, of course, that he will also serve. Each candidate is entitled to have placed in his petition a statement in not to exceed 100 words. and on the ballot, after his name, a legend in not to exceed 12 words, setting forth any measures or principles he especially advocates.

STATEMENT NO. 1.

In the case of a legislator's nomination, the candidate may, in addition to his statement, not exceeding 100 words specifying measures and principles he advocates, also subscribe to one of two statements, but if he does not so subscribe he shall not on that account be debarred from the ballot. It will be seen, therefore, that three courses are open to him. He may subscribe to Statement No. 1 as follows:

I further state to the people of Oregon, as well as to the people of my legislative district, that during my term of office I shall always vote for that candidate for United States Senator in Congress who has received the highest number of the people's votes for that position at the general election next preceding the election of a Senator in Congress without regard to my individual preference.

Or he may subscribe to Statement No. 2, as follows:

During my term of office I shall consider the vote of the people for United States Senator in Congress as nothing more than a recommendation which I shall be at liberty to wholly disregard if the reason for doing so seems to me to be sufficient.

Or he may be perfectly silent on the election of United States Senator. It is entirely optional with the candidate.

POPULAR VOTE FOR UNITED STATES SENATOR.

The law further provides that United States Senators may be nominated by their respective parties in the party primaries, and the candidate receiving the greatest number of votes thereby becomes the party nominee. Then, in the general election the party nominees are voted for by the people, and the individual receiving the greatest number of votes in the general election thereby becomes the people's choice for United States Senator.

Notwithstanding that our primary-election law embodying these statements, particularly Statement No. 1, was passed by a popular vote of approximately 56,000 for to 16,000 against, the opponents of the law charged that the people did not know what they were doing when they voted for it. Therefore. the advocates of the election of Senators by the people and of the enforcement of Statement No. 1 submitted to the people under the initiative in 1908 the following bill:

Be it enacted by the people of the State of Oregon:

SECTION 1. That we, the people of the State of Oregon, hereby instruct our representatives and senators in our legislative assembly, as such officers, to vote for and elect the candidates for United States Senators from this State who receive the highest number of votes at our general elections.

Although there was no organized campaign made for the adoption of this bill other than the argument accompanying its submission, while the opponents of the primary law assailed it vehemently, the basic principle of Statement No. 1 and the election of United States Senators by the people was again indorsed by the passage of the bill by a popular vote of 69,668 for it to 21,162 against it, or by nearly 3½ to 1.

41504—9003

HOW A DEMOCRAT WAS ELECTED SENATOR.

Mr. President, in this connection I deem it proper to divert for a time from an explanation of our primary law and give a concrete illustration of its operation. Both my colleague, Senator CHAMBERLAIN, and myself were selected by the people and elected by the legislature under the provision of this law. Opponents of popular government, and especially of the election of United States Senators by a direct vote of the people, have bitterly assailed Statement No. 1 of our law because a legislature, overwhelmingly Republican, elected my colleague, who was a candidate selected by the Democratic party and nominated by the whole electorate of the State as the people's choice of our State for United States Senator. Upon reflection I think every intelligent man who is honest with himself must concede that this fact, instead of being the basis of a criticism, is the highest kind of evidence as to the efficacy of the law, and every advocate of the election of United States Senators by a popular vote must realize that Oregon has evolved a plan through its Statement No. 1, provision of its primary law, wherein, in effect, the people enjoy the privilege of selecting their United States Senators, and, through the crystallization of public opinion, the legislative ratification of their action.

The Oregon legislature consists of 90 members, 30 in the senate and 60 in the house, 46 making the necessary majority on full attendance for the election of United States Senator. Fifty-one members out of 90 of the legislature which elected my colleague, Senator CHAMBERLAIN, were subscribers to Statement No. 1, making on joint ballot a majority of 6 out of a total of 90 members. All of these 51 members subscribed to Statement No. 1 pledge voluntarily, and it was so subscribed to by them from a personal belief in the desirability of the popular election of United States Senators and for the purpose of securing for themselves from the electorate preferment in the election to the office sought; the consideration in exchange for such preferment was to be by them, as the legally constituted representatives of the electorate in their behalf, the perfunctory confirmation of the people's selection of United States Senator as that choice might be ascertained under the provisions of the same law by which the legislators themselves secured nomination to office.

To further illuminate the situation, I will state that in the primaries held in April, 1908, H. M. Cake received the Republican nomination for United States Senator, and my colleague, Senator CHAMBERLAIN, then governor of the State, received the Democratic nomination for United States Senator. At the general election in June Senator CHAMBERLAIN defeated Mr. Cake, notwithstanding the State was overwhelmingly Republican, thereby developing from the Democratic candidate into the people's choice for United States Senator. The normal Republican majority in Oregon, I think, is from 15,000 to 20,000. With full recognition of Governor CHAMBERLAIN'S ability and fitness for the office, the fact that for nearly six years he made the best governor Oregon ever had, and considering that undoubtedly he is the most popular man in our State, I deem it but just to the law and a proper answer to the criticism of enemies of the law that it destroys party lines and integrity, to state that, in my opinion, Senator CHAMBERLAIN received the votes of several thousand Republican enemies of the law, who believed that in selecting Governor CHAMBERLAIN, a Democrat, they would prevent a Republican legislature from ratifying the people's selection, obeying the people's instructions, and electing as United States Senator the individual, regardless of party, that the people might select for that office. Thus they hoped to make the primary law and Statement No. 1 odious, and sought to create what they thought would be an impossible condition by forcing upon a Republican legislature for confirmation the popularly designated Democratic candidate for the United States Senate. They failed to realize that, greater than party and infinitely greater than any individual, the people's choice becomes a representative of the principle and of the law; that the intelligence and integrity of the whole electorate of the State, as well as the integrity and loyalty of the members of the legislature were at stake, and from any honorable view point the mere intimation of the possibility of the legislature or any member of the legislature failing conscientiously to fulfill his pledge or loyally obey the instructions of the people would not only be an insult to the individual members of the legislature, but an insult to the intelligence, independence, and patriotism of the Oregon electorate that they would permit such action to go unnoticed or without holding the culprit to a rigid responsibility for his treason.

41504—9003

NO OATH MORE SACRED.

Let us again consider the wording of this Statement No. 1 pledge, taken by 51 members of the Oregon legislature:

Statement No. 1.

I further state to the people of Oregon, as well as to the people of my legislative district, that during my term of office I will always vote for that candidate for United States Senator in Congress who has received the highest number of the people's votes for that position at the general election next preceding the election of a Senator in Congress, without regard to my individual preference.

No oath could be more sacred in honor, no contract more binding, no mutual consideration more definite, than is contained in this Statement No. 1 pledge, and no parties to a contract could be of more consequence to government and society than the electorate upon the one side and its servants upon the other.

Under the United States Constitution there can be no penalty attached to the law. The legislator breaking his sacred pledge can not be imprisoned or fined, hence he is doubly bound by honor to redeem his voluntary obligations. Failure to do so would not only brand him as the destroyer of a sacred trust, but as the most contemptible of cowards because legally immune from punishment for his perfidy.

Yet, Mr. President, there were efforts made to dishonor our State and our public servants. During the session of the legislature a former government official, an assistant to the chairman of the Republican National Committee, appeared in Oregon and, I am informed, promised federal appointments to legislative members if they would disregard their Statement No. 1 pledges to the electorate. The effort was made by the enemies of the law to create the impression that by reason of this person's relations with the chairman of the Republican National Committee during the national campaign he would be able to deliver these promised federal appointments in case Statement No. 1 subscribers sold their honor and betrayed their trust.

I mention these facts to show that the greatest possible strain was placed upon our law, and to the credit of the 51 subscribers of Statement No. 1 in that legislature be it said that every one of those subscribers voted in accordance with his solemn obligation. But I would call the attention of the Senate to the fact that notwithstanding the people of the State had passed under the initiative the bill I have referred to instructing all the members of the legislature to vote for the people's choice for United States Senator, not a single member of the legislature obeyed said instructions except the Statement No. 1 subscribers.

AN EVOLUTION OF PRACTICAL POLITICS.

Mr. President, Statement No. 1 was an evolution of many years' experience with practical and commercial politics. We doubtless all have found in individual cases that men's memories, pledges, and agreements were a negligible quantity, but I think we in Oregon have demonstrated that our direct primary law contains a pledge that will hold any sane man regardless of his cupidity, ambition, cowardice, or temerity.

OTHER PROVISIONS OF PRIMARY LAW.

Resuming consideration of the direct primary: The returns from a primary election are canvassed in the same manner as the returns from a general election, and the candidate receiving the highest vote for each office is declared the nominee of his party. Candidates of parties other than those polling 25 per cent of the total vote of the State may be nominated without participating in the direct primary, but by means of petition or mass meeting. No candidate nominated otherwise than in the direct primary can use either the word "Republican" or "Democrat" in any form; that is, the nominees of the direct primary are entitled to the party designation in the general election, and no opposition candidate can designate himself as an "Independent Republican" or "Progressive Republican," or use any other qualifying term which includes the word "Republican" or "Democrat." These provisions secure to the nominees of the direct primary the exclusive right to their party designation on the ballot in the general election. Each candidate in the direct primary is entitled to have placed in his petition for nomination a statement containing not to exceed 100 words, and on the ballot in the primary and general election a legend of not more than 12 words specifying any measures or principles he especially advocates.

41504—9003

In my opinion the direct primary is the only practicable method of fully securing to the people their right to choose their public servants.

CONVENTION NOMINEE UNDER OBLIGATION TO A BOSS.

Under the convention system the members of a party delegate their power of selection of candidates to the members of a convention. To my mind this system is most pernicious, because the party electorate feels that its responsibility ceases with the selection of its convention delegates. - Hence the responsibility of citizenship is weakened and shiftlessness encouraged.

As soon as the delegates to the convention are chosen, the power of selection of public servants becomes centralized in a few and opportunity is extended to individuals and interests who wish to use public servants for selfish or ulterior purposes. Influences adverse to the general welfare are immediately brought to bear upon this body of delegates. Factions are created, combinations effected, and party disruption frequently results. Often a convention nominates a man for public office who, prior to the convention, was never seriously considered as a probable nominee.

In my thirty years' experience in politics quite frequently have I seen this the case. This strengthens my conviction that the prevailing system of convention selections of party candidates is not representative, but misrepresentative, form of government. The people certainly have no voice in the selection of candidates when their temporary representatives had no idea of making a selection until occurrences transpiring during the convention determine their action.

Let us look at the system in vogue in the selection of delegates. In most cases where convention nominations are made we can trace back to the political boss and machine the preparation of a slate of delegates. In the selection of the individuals composing the slate the political boss has in mind the perpetuation of his own power, and selects individuals whose interests are identical with his or whom he thinks he can direct and control, though occasionally, if anticipating a struggle, he will select a few men whose standing in the community will bring strength to the slate he has prepared in order to carry out his purposes. Independent men are selected only where it is deemed necessary by the political boss to deceive the public and secure sufficient support from the personal influence of those few selections to carry through the slate made up chiefly of his willing tools. This system prevails not only in selection of delegates to county conventions, but in selection of delegates to congressional, state, and national conventions as well. The result is inevitable that the delegates nominate candidates whom the machine and political bosses desire, except in rare cases where a few independent men are able, by presentation of arguments against the qualifications of a machine candidate, to demonstrate to the convention the probability of the defeat of the man slated for the position. Frequently, of course, a case is presented where the boss has made promises to various aspirants for the same office, in which case he excuses himself to the disappointed aspirant by explaining that he was unable to control the convention. Thus mendacity and treachery are fostered by the convention system which by the primary system are absolutely eliminated.

Under the convention system the nominee realizes that his nomination is due chiefly, if not entirely, to the boss. With this knowledge naturally goes a feeling of obligation, so that the nominee, when elected, is desirous, whenever possible, of acceding to the wishes of the man to whom his nomination is due. Thus the efficiency and independence of the public servant is seriously affected and his duty to the public in many cases completely annihilated.

NOMINEE OF DIRECT PRIMARY RESPONSIBLE TO PEOPLE ALONE.

How different in its operation is the direct primary. The man who seeks a nomination under the direct primary system must present before the members of his party the policies and principles by which he will be governed if nominated and elected. He must submit to them his past record in public and private life. Promises made to political bosses or machine managers will have no beneficial influence in determining the result, and therefore the candidate is not tempted to place himself under obligations to any interests adverse to those of the general public. The members of a party have it within their power to determine which of the candidates best represents their ideas and wishes. After they have made their selections the candidates of opposing parties must stand before the people at the general election, when a choice will be made between them. A public servant thus chosen owes his election to no faction,

machine, or boss, but to the members of his party and the electorate of his State or district. He is accountable to them alone for his conduct in office, and has, therefore, every incentive to render the best possible public service. How different in all essentials from the position of the candidate who has received his nomination at the hands of a convention controlled by a political machine.

The great masses of the people are not only intelligent, but honest. They have no selfish interests to serve and ask nothing of their public officials but faithful and efficient service. Only the very few have interests adverse to those of the general welfare. The people therefore act only for public good when they choose between candidates for the nomination or candidates for election.

The direct primary encourages the people of the country to study public questions and to observe and pass judgment upon the acts of their public officials. This in itself tends very strongly to the building up of a better citizenship.

Honest selections mean honest government and better public servants.

Public servants who lack confidence in the intelligence or honesty of the people will find their feelings reciprocated.

PRIMARY LAWS PROTECT PARTIES.

Many claim that primary laws destroy party. In my opinion, they protect and cement parties. Party success depends, under primary laws, upon the ideas and principles advocated and the nominations made by the parties in their primaries. If a majority party fails to make proper nominations, or if the minority party has better material in its electorate, then a minority party would rapidly develop into a majority party, and rightly so. Under a direct primary law no individual can acquire a large personal following or build up a personal organization, except such a following as would support the individual on account of the principles advocated by him or the demonstration made by him as a public servant. But no man would be able to transfer such a following for or against another individual, though he might influence thousands or hundreds of thousands of voters to support his ideas, constructive suggestions, or proposed solution of pending problems. This does not destroy party, but elevates and strengthens it, and fortunate, indeed, is that party which possesses in its electorate one or more individuals who are able to advance new ideas or evolve solutions which appeal to the sound judgment of his fellow-men.

POPULAR SELECTION OF PRESIDENT AND VICE-PRESIDENT.

For years the desirability of popular selection of candidates for President and Vice-President has grown upon my mind. By adoption of such a plan, Presidents would be relieved of prenomination or preelection obligations, except the obligation of good service to all the people. Thus accountability to the people alone would be established and aspirants for the Presidency would be free from the necessity of consulting the wishes of men who make and manipulate conventions. To render good public service would be the sole desire, for reelection would depend upon demonstration of capability and fitness for office. Because of this conviction I have arranged to submit, under the initiative, to the people of Oregon at the next general election a bill further enlarging the scope of our present primary law. It provides for the direct primary election of delegates to national conventions, selections of presidential electors, and gives the opportunity to the elector in his party primary to express his preference for President and Vice-President.

I am confident that the people of Oregon will enact this law, and I hope that other States will follow her example, in which event, through the crystallization of public opinion, a method of popular selection of Presidents and Vice-Presidents would be secured without violation of the Federal Constitution.

NOT A REVOLUTIONARY CHANGE.

The declaration by each State of its choice for President would be in no sense a wider departure from the Constitution than was the transformation of the electoral college into a mere registering or recording board, yet no one now thinks such change in anywise revolutionary. The theory of the Constitution was that each State should choose a body of electors who should have choice—election—as to those for whom they should vote for President and Vice-President. This theory we find expressed in all the expository letters and pamphlets written by those who drafted the Constitution. The electors were to be free men, bound to no candidate, nor to any party. They were to meet and

survey the whole country, choosing therefrom according to their own unhampered and wisest judgment the man best fitted to be the head of the Nation. This was the law in 1789, and it is the law to-day. Theoretically and legally the electoral college which cast its perfunctory vote for Mr. Taft and Mr. Sherman might have elected Mr. Bryan and Mr. Kerns. Had this been done, all the vast power of the Supreme Court could not have set the election aside or compelled a true registration of the popular decision as expressed at the polls. The Constitution of the United States was changed a hundred years ago by force of mere popular acceptation and general usage, so that its machinery to-day is used to effect an end which it does not in its letter express—and did not in its conception anticipate. We have made the constitutional machinery suit our idea of the way this Government should be conducted.

We have said that it was better that we should by means of political parties choose candidates and by moral force bind the electors whom we nominate to vote for such candidates than that we should leave the electors we might choose free to do as they saw fit. We have converted the elector into an agent—a messenger if you will—whose honorable duty it is to cast a ballot for one who may not be his personal choice for President or whom, indeed, he may regard as unfitted for the position of President. The constitutional theory has been abandoned and one more democratic has been substituted. We evolved a presidential election plan which, while departing from the philosophy of the makers of our national organic law, preserved its letter and made it subserve the purpose of a society more highly developed than that existent when the law was made. This is the history of all written law. There is nothing startling in the proposal that the Constitution or any other law shall be so interpreted as to meet modern needs and thought. We moved toward democracy when we abolished the elector as an elector and left him but a figurehead, and it will be a much less radical move to give instructions by popular vote to the delegate who names the party candidate. Indeed, it would appear that to follow the latter course would be to do no more than institute a procedure complementary to the former.

CORRUPT PRACTICES ACT.

The next step in popular government in Oregon after the adoption of the direct primary law was the adoption of a corrupt practices act, which the legislature had refused to enact, but which the people of the State adopted under the initiative.

The corrupt practices act was adopted under the initiative in 1908 by popular vote of 54,042 to 31,301. It provides that no candidate for office shall expend in his campaign for nomination more than 15 per cent of one year's compensation of the office for which he is a candidate, provided that no candidate shall be restricted to less than $100.

PUBLICITY PAMPHLET.

The act provides, however, for the publication of a pamphlet by the secretary of state for the information of voters, in which pamphlet a candidate in the primary campaign may have published a statement setting forth his qualifications, the principles and policies he advocates and favors, or any other matter he may wish to submit in support of his candidacy. Each candidate must pay for at least one page, the amount to be paid varying from $100 for the highest office to $10 for the minor offices. Every candidate may secure the use of additional pages at $100 per page, not exceeding three additional pages. Any person may use space in this pamphlet in opposition to any candidate, the matter submitted by him being first served upon the candidate and the space being paid for the same as in the case of candidates. The matter submitted in opposition to candidates must be signed by the author, who is subject to the general laws regarding slander and libel. Information regarding state and congressional candidates is printed in a pamphlet issued by the secretary of state, one copy being mailed to each registered voter in the State. Pamphlets regarding county candidates are issued by the county clerk and mailed to each voter in the county. These pamphlets must be mailed at least eight days before the primary election. The amount of money paid for space in the public pamphlet of information is not considered in determining the amount each candidate has expended in his campaign; that is, he is entitled to expend in his primary campaign 15 per cent of one year's compensation in addition to what he pays for space in the public pamphlet.

41504—9003

Prior to the general election the executive committee or managing officers of any political party or organization may file with the secretary of state portrait cuts of its candidates and typewritten statements and arguments for the success of its principles and the election of its candidates and opposing or attacking the principles and candidates of all other parties. This same privilege applies to independent candidates. These statements and arguments are printed in a pamphlet and mailed to the registered voters of the State not later than the tenth day before the general election.

Each party is limited to 24 pages, and each independent candidate to 2 pages, each page in this pamphlet being charged for at the rate of $50 per page. In the campaign preceding the general election each candidate is limited in campaign expenditures to 10 per cent of one year's compensation.

For the purposes of this act the contribution, expenditure, or liability of a descendant, ascendant, brother, sister, uncle, aunt, nephew, niece, wife, partner, employer, employee, or fellow-official or fellow-employee of a corporation is deemed to be that of the candidate himself. Any person not a candidate spending more than $50 in a campaign must file an itemized account of his expenditures in the office of the secretary of state or the county clerk and give a copy of the account to the candidate for whom or against whom the money was spent.

LEGITIMATE USE OF MONEY WITHIN LIMIT.

While the corrupt practices act limits the candidate to the expenditure of 15 per cent of one year's salary in his primary campaign and 10 per cent of a year's salary in the general campaign, in addition to what he pays for space in the publicity pamphlet, yet the law does not prohibit any legitimate use of money within this limitation. The act makes it possible for a man of moderate means to be a candidate upon an equality with a man of wealth.

Let us take a concrete example as a means of illustrating the operation of Oregon's corrupt practices act. The salary of the governor is $5,000 a year. A candidate for the nomination for governor may take a maximum of 4 pages in the publicity pamphlet, and thus, at a cost of $400, be able to reach every registered voter of his party in the entire State. In addition to that $400 he may spend $750, or 15 per cent of one year's salary, in any other manner he may choose, not in violation of the corrupt practices act. A candidate may purchase space in the advertising columns of a newspaper, but in order that this paid advertising shall not be mistaken for news the law requires that all paid articles be marked as such.

The law expressly provides that none of its provisions shall be construed as relating to the rendering of services by speakers, writers, publishers, or others for which no compensation is asked or given, nor to prohibit expenditure by committees of political parties or organizations for public speakers, music, halls, lights, literature, advertising, office rent, printing, postage, clerk hire, challengers or watchers at the polls, traveling expenses, telegraphing or telephoning, or the making of poll lists.

The successful nominee in the primary may spend in his general campaign 10 per cent of one year's salary, this expenditure, in the case of a candidate for governor, being $500. In addition to this 10 per cent of a year's salary he may contribute toward the payment for his party's statement in the publicity pamphlet to be mailed by the secretary of state to every registered voter. In the publicity pamphlet for the general campaign each party may use not to exceed 24 pages, at $50 per page, making the total cost to the party committee $1,200, or about $100 for each candidate.

* * * * * * *

The candidate is therefore limited to an expenditure of $600 in his general campaign, only $100 of which is necessary in order to enable him to reach every registered voter. He could reach every registered voter in his party in the primary campaign for $400. Under no other system could a candidate reach all the voters in two campaigns at a total cost of $500.

IMPROPER ACTS PROHIBITED.

The Oregon corrupt practices act encourages and aids publicity, but prohibits the excessive or improper use of money or other agencies for the subversion of clean elections. Among the acts which are prohibited I may mention these:

Promises of appointments in return for political support.

Solicitation or acceptance of campaign contributions from or payment of contributions by persons holding appointive positions.

41504—9003

Publication or distribution of anonymous letters or circulars regarding candidates or measures before the people.

Sale of editorial support or the publication of paid political advertising without marking it "Paid advertising."

Use of carriages in conveying voters to the polls.

Active electioneering or soliciting votes on election day.

Campaign contributions by quasi public or certain other important classes of corporations generally affected by legislation.

Intimidation or coercion of voters in any manner.

Soliciting candidates to subscribe to religious, charitable, public, and semi-public enterprises; but this does not prohibit regular payments to any organization of which the candidate has been a member, or to which he has been a contributor for more than six months before his candidacy.

Contribution of funds in the name of any other than the person furnishing the money.

Treating by candidates as a means of winning favor.

Payment or promise to reward another for the purpose of inducing him to become or refrain from becoming or cease being a candidate, or solicitation of such consideration.

Betting on an election by a candidate, or betting on an election by any other person with intent to influence the result.

Attempting to vote in the name of another person, living, dead, or fictitious.

PUBLICITY OF CAMPAIGN EXPENDITURES.

There is no interference with such legitimate acts as tend to secure full publicity and free expression of opinion. Personal and political liberty is in no way infringed upon, the only purpose being to prohibit the excessive use of money, promises of appointment, or deception and fraud.

The corrupt practices act requires that every candidate shall file an itemized statement of his campaign expenditures within fifteen days after the primary election, including in such statement not only all amounts expended, but all debts incurred or unfulfilled promises made.

Every political committee must have a treasurer, and cause him to keep a detailed account of its receipts, payments, and liabilities. Any committee or agent or representative of a candidate must file an itemized statement of receipts and expenditures within ten days after the election. The books of account of any treasurer of any political party, committee, or organization during an election campaign shall be open at all reasonable office hours to the inspection of the treasurer and chairman of any opposing political party or organization for the same electoral district. Failure to file statements as required by law is punishable by fine.

The candidate violating any section of the corrupt practices act forfeits his right to the office. Any other person violating any section of this act is punished by imprisonment of not more than one year in the county jail or a fine of not more than $5,000, or both. The candidate is also subject to the same penalties.

THE RECALL.

The final step in the establishment of popular government in Oregon was the adoption of the recall amendment to the constitution, which was adopted in 1908 by a vote of 58,381 to 31,002. Under this amendment any public officer may be recalled by the filing of a petition signed by 25 per cent of the number of electors who voted in his district in the preceding election. The petition must set forth the reasons for the recall, and if the officer does not resign within five days after the petition is filed a special election must be ordered to be held within twenty days to determine whether the people will recall such officer. On the ballot at such election the reasons for demanding the recall of said officer may be set forth in not more than 200 words. His justification of his course in office may be set forth in a like number of words. He retains his office until the results of the special election have been officially declared.

No petition can be circulated against any officer until he has held office six months, except that in the case of a member of the state legislature it may be filed at any time after five days from the beginning of the first session after his election. At the special election the candidate receiving the highest number of votes is declared elected. The special election is held at public expense, but a second recall petition can not be filed against an officer unless the petitioners first pay the entire expense of the first recall election.

41504—9003

3 0112 061885619

THE BEST SYSTEM OF POPULAR GOVERNMENT.

Mr. President, I reiterate that Oregon has evolved the best system of popular government that exists in the world to-day.

The Australian ballot assures the honesty of elections.

The registration law guards the integrity of the privilege of American citizenship—participation in government.

The direct primary absolutely insures popular selection of all candidates and establishes the responsibility of the public servant to the electorate and not to any political boss or special interest.

The initiative and referendum is the keystone of the arch of popular government, for by means of this the people may accomplish such other reforms as they desire. The initiative develops the electorate because it encourages study of principles and policies of government, and affords the originator of new ideas in government an opportunity to secure popular judgment upon his measures if 8 per cent of the voters of his State deem the same worthy of submission to popular vote. The referendum prevents misuse of the power temporarily centralized in the legislature.

The corrupt-practices act is necessary as a complement to the initiative and referendum and the direct primary, for, without the corrupt-practices act, these other features of popular government could be abused. As I have fully explained, the publicity pamphlet provided for by the corrupt-practices act affords all candidates for nomination or election equal means of presenting before the voter their views upon public questions, and protects the honest candidate against the misuse of money in political campaigns. Under the operation of this law popular verdicts will be based upon ideas, not money; argument, not abuse; principles, not boss or machine dictation.

The recall, to my mind, is rather an admonitory or precautionary measure, the existence of which will prevent the necessity for its use. At rare intervals there may be occasion for exercise of the recall against municipal or county officers, but I believe the fact of its existence will prevent need for its use against the higher officials. It is, however, an essential feature of a complete system of popular government.

ABSOLUTE GOVERNMENT BY THE PEOPLE.

Under the machine and political-boss system the confidence of sincere partisans is often betrayed by recreant leaders in political contests and by public servants who recognize the irresponsible machine instead of the electorate as the source of power to which they are responsible. If the enforcement of the Oregon laws will right these wrongs, then they were conceived in wisdom and born in justice to the people, in justice to the public servant, and in justice to the partisan.

Plainly stated, the aim and purpose of the laws is to destroy the irresponsible political machine and to put all elective offices in the State in direct touch with the people as the real source of authority; in short, to give direct and full force to the ballot of very individual elector in Oregon and to eliminate dominance of corporate and corrupt influences in the administration of public affairs. The Oregon laws mark the course that must be pursued before the wrongful use of corporate power can be dethroned, the people restored to power, and lasting reform secured. They insure absolute government by the people.

41504—9003

O